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NOTES OF CASES.

Abusive Language Over a Telephone as Assault.—Does the use of violent language over a telephone constitute an assault? See *Kramer v. Ricksmeier*, 139 Northwestern Reporter, 1091. In that case plaintiff charged that she had suffered an attack of rheumatism, which left her in an enfeebled and nervous state, and that she was making ostensible progress in the way of recovery from that affliction, when on a certain date the defendant, in the absence of plaintiff's husband, without cause or provocation on the part of plaintiff, willfully, maliciously, wantonly, and negligently called plaintiff to the telephone in her home, and in a vociferous and angry manner, knowing that her husband was absent, began to make statements about the cattle belonging to her husband, that they had broken out of their pen and were at large, and in violent and profane language ordered her to take charge of the cattle at once, with an intimation that he would be at plaintiff's home to avenge himself for an assumed wrong she had permitted in failing to keep her husband's cattle within their inclosure. That by reason of such language plaintiff became and was greatly humiliated and shocked, and caused to become greatly excited and nervous, resulting in sickness and debility, and causing her great pain and anxiety and to relapse into a feeble and debilitated condition, from which she has been unable to recover and is permanently disabled, and suffers great bodily pain and mental anguish. The Supreme Court of Iowa holds that a demurrer was properly sustained for the reason that claims of the nature set forth in the plaintiff's petition are too speculative, remote, and improbable to furnish a basis for an action for damages; nor can the action be sustained on the theory that an assault is charged, since it is well settled that mere words, even a short range, do not constitute an assault.

Legality of Service by Trickery.—Process servers must not resort to trickery and device in order to obtain service upon a defendant, according to *Bell v. Lawrence*, 140 New York Supplement, 1106. On a motion to set aside the service of the summons, defendant's affidavit showed that on the date of the service she was in the bedroom of her residence when a young man appeared at the house and stated that he bore an important letter from a certain party. Pursuant to a previous agreement with such party defendant was expecting to receive such a letter, so the messenger was admitted and allowed to go upstairs to the door of defendant's bedroom, where he was met by her husband. Thereupon the process server again stated that he bore an important letter from a party and exhibited what purported to be such letter, and that he had received instructions to

deliver the letter to no one but the defendant personally. Upon this explanation he was admitted into the room. Putting the pretended letter into his pocket he proceeded to serve upon defendant the summons and complaint. The City Court of New York, Special Term, held that the subterfuge resorted to to effect service upon defendant was wrongful and improper, and grants a motion to set aside such service.

Distribution of Hand Bills and Circulars Barred.—An ordinance of New York, which should be of interest to every American City energetic in keeping its streets and public places clean and free from being littered with hand bills and advertisements, is construed in a test case brought before the City Magistrate's Court of New York City entitled *People v. Horwitz*, 140 New York Supplement, 437. The ordinance reads: "That no person shall throw, cast, or distribute in or upon any of the streets, avenues, or public places, or in front yards or stoops, any hand bills, circulars, cards, or other advertising matter whatsoever. As to its liability the court holds that the ordinance does not violate the Constitution providing that no person shall be deprived of liberty without due process of law, for a municipality through its legislative body has the right to prohibit the use of the streets for any purpose detrimental to the common good or that may conflict or interfere with the rights of others in the enjoyment of the highways, which should be unincumbered and clean so as to promote the safety, health, and comfort of the public. It is further held that it is not necessary to a conviction that the objectionable matter be cast or thrown away so that the streets be littered with it, for the act of distribution in itself is a complete offense separate from the act of throwing.

Right of Owners of Patent to Control Retail Price Denied.—An important decision was rendered by the Supreme Court of the United States on May 26, 1913, in *Bauer Chemical Company v. O'Donnell*. The case involved the right of the owners of a patented article to control the price at which retail dealers shall sell to consumers. The defendant bought at wholesale a patented medicine manufactured by the plaintiff company, each bottle of which bore a label to the effect that the medicine was licensed to be sold at not less than \$1 a bottle, and that any dealer violating the license would be sued for damages and restrained by injunction. The defendant retailed it at 85 cents per bottle, and the plaintiff company sought to enjoin him from so doing. The Supreme Court of the District refused an injunction, and on appeal to the Court of Appeals that court certified the case to the Supreme Court of the United States. The decision of the majority of the Supreme Court was announced by Mr.